Supreme Court, U.S.
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No. OFFICE OF THE CLERK

In the
Supreme Court of the United States

MARIA DEISY PALMA-PALMA, CARLOS OVIDIO NAVARETTE, JOSE RENE NAVARETTE, and DEISY JOHANA PALMA,
Petitioners,

v.

BOARD OF IMMIGRATION APPEALS and ERIC H. HOLDER, JR. UNITED STATES ATTORNEY GENERAL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Should the First Circuit's standard for making a *prima facie* showing for relief under the Convention Against Torture should prevail over the contrary interpretation imposed by the Fifth Circuit?

PARTIES TO THE PROCEEDING

Petitioners: Maria Deisy Palma-Palma, an individual, Carlos Ovidio Navarrete, an individual, Jose Rene Navarette, an individual, Deisy Johana Palma, an individual.

Respondents: Board of Immigration Appeals ("BIA"), a governmental party to the proceedings before the United States Immigration Court and the United States Court of Appeals for the Fifth Circuit. Eric H. Holder, Jr., United States Attorney General in his official capacity, and party to the proceedings before the United States Court of Appeals for the Fifth Circuit.

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IN THE
SUPREME COURT OF THE UNITED STATES

MARIA DEISY PALMA-PALMA, CARLOS OVIDIO NAVARETTE, JOSE RENE NAVARETTE, and DEISY JOHANA PALMA,
Petitioners,

v.

BOARD OF IMMIGRATION APPEALS and ERIC H. HOLDER, JR. UNITED STATES ATTORNEY CENERAL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MARIA DEISY PALMA-PALMA, *et al.*, Petitioners, by undersigned counsel, under appropriate rules of this Court, request that this Court issue a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

Petitioners sought asylum in the United States when MS-13 gang members kidnapped petitioner Carlos Ovidio Navarrette ("Carlos") in June of 2005 in an attempt to ransom money from Carlos' family. MS-13 targeted Petitioners because MS-13 perceived them as wealthy because their family patriarch at the time worked in the United

States. During Carlos' ultimately successful escape attempt, he was beaten, stabbed and persecuted by MS-13 gangsters.

The BIA reached a clearly erroneous decision below in denying Petitioners' motion to reopen. Because Petitioners' motion to reopen was based upon substantial new evidence, which on its face was unavailable at Petitioners' deportation hearing, the BIA should have granted their motion to reopen.

Worse, the Fifth Circuit Court of Appeals affirmed the clearly erroneous BIA decision below on a summary affirmance standard. By per curiam opinion, the Fifth Circuit found that Petitioners' new evidence – evidence which would have changed the result on Petitioners' Convention Against Torture ("CAT") claims – would have had no substantial impact on the outcome of the case. Petitioners who have been targeted by gangs which cannot be controlled by the government of El Salvador face violence and death upon return to El Salvador.

JURISDICTION

The court of appeals had subject matter jurisdiction under 28 U.S.C. § 1331 as this case presents issues involving a law of the United States. Additionally, this court has jurisdiction to review the court of appeals' decision under *Kucana v. Holder*, __ U.S. __, 130 S.Ct. 827 (2010).

STATEMENT OF THE CASE

A. Procedural Background

Petitioners' first hearing before the immigration judge ("IJ") occurred on November 27, 2006. The IJ issued an unfavorable ruling to petitioners' request for asylum on April 10, 2007. The BIA affirmed the IJ's denial of asylum on March 27, 2009. Believing their claims to be worthy of more than summary treatment, Petitioners filed a petition for review with the Fifth Circuit. On June 19, 2009, the Fifth Circuit dismissed Petitioners' first petition for review as untimely.

On June 25, 2009, Petitioners timely filed a motion to reopen with the BIA. The BIA denied Petitioners' motion to reopen on November 20, 2009. Petitioners timely filed their second petition for review and a motion for stay of removal. Respondents then moved for summary affirmance on December 10, 2009, which the Fifth Circuit granted on January 25, 2010.

Petitioners moved for panel rehearing. Petitioners' motion for rehearing was denied on April 1, 2010.

B. Factual Background

Petitioners are victims of the nefarious Maya Salvatrucha ("MS-13") gang. In El Salvador, Petitioners were persecuted by the MS-13, and fearing for their lives, sought asylum in the United States.

Petitioners' decision to leave El Salvador was not an easy one, but the severe persecution which they endured made it necessary. In June of 2005,

Carlos was kidnapped by MS-13 gangsters. Although he escaped, he was beaten and stabbed during the episode.

This was all his family could withstand. The El Salvadoran government is powerless to influence or control the MS-13. In fact, the evidence Petitioners brought forward in their motion to reopen with the BIA established that if MS-13 did not quite have their government's imprimatur, they had the next-best-thing, its acquiescence.

In El Salvador, the MS-13 has grown so perful that it is beyond the government's ability to control. More than ninety percent of youths arrested for suspected gang activities in El Salvador are released within 72 hours for lack of evidence. This is a systemic problem: the El Salvadoran government lacks the money and political will to make reforms which address the gang problem.

The new evidence Petitioners sought to introduce in their motion to reopen addressed this specific problem. This evidentiary study, not released until February 2007 was not available to Petitioners when they had their asylum hearing in November 2006. Had the IJ had the benefit of this study, he would have concluded that Petitioners' torture was with the El Salvadoran government's acquiescence. Indeed, this study concluded that the gang violence was a political force, "refracted through, and amplified by, deep political divisions and power struggles in" El Salvador. *See* NO PLACE OT HIDE, GANG, STATE, AND CLANDESTINE VIOLENCE

IN EL SALVADOR, INTERNATIONAL HUMAN RIGHTS CLINIC, HUMAN RIGHTS PROGRAM, HARVARD LAW SCHOOL, 34-35 (February 2007) *available at* http://www.wola.org/media/Harvard_Gangs_NoPlaceToHide.pdf (the "2007 Harvard Study").

With this new evidence, Petitioners easily made a *prima facie* showing of torture under the Convention Against Torture ("CAT").

REASONS FOR GRANTING WRIT

A. The Fifth Circuit's decision creates a split of authority in the circuit courts

1. The CAT standard outside the Fifth Circuit

The United States ratified the CAT on October 27, 1990, 136 Cong. Rec. S17, 386-501 (daily ed. Oct. 27, 1990). The CAT became binding on the United States in November of 1991, after President Clinton delivered the ratifying documents to the United Nations. U.N. Doc. 571 Leg/SER.E/13.IV.9 (1995); Convention, art. 27(2). The Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") initiated the implementation of the CAT. Pub. L. No. 105-277, div. G., tit. XXII, § 2242, 112 Stat. 2681-822 (codified at 8 U.S.C. § 1231). That provision provides in part:

> No state [shall] . . . expel, return ("refouler") or extradite a person to another state where there are substantial grounds for believing that

> he would be in danger of being subjected to torture.

Id.

Generally, to establish eligibility for CAT protection, a petitioner must show that it is more likely than not that he will be tortured upon return to his country. *Khan v. Mukasey*, 549 F.3d 573, 575 n.2 (1st Cir. 2008). To establish a *prima facie* case for relief under the CAT, the applicant need only produce objective evidence showing a "reasonable likelihood" that he can establish that he is more likely than not to be tortured. *Sevoian v. Ashcroft*, 290 F.3d 166, 175 (3d Cir. 2002); *Romilus v. Ashcroft*, 385 F.3d 1, 8 (1st Cir. 2004).

Torture is defined as "(1) an act causing severe physical or mental pain or suffering; (2) intentionally inflicted; (3) for a proscribed purpose; (4) by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim and (5) not arising from lawful sanctions." *Romilus*, 385 F.3d at 8.

2. The First Circuit would have reopened; the Fifth Circuit did not

Based upon the facts set forth above, had Respondents been in the First Circuit, they would have made a *prima facie* showing under the CAT, and their new evidence concerning government acquiescence been probative. Indeed, it was the IJ's conclusion, at their first hearing before the 2007

Harvard Study was available that "the record contains not even a scintilla of evidence that the Government of El Salvador or any person acting in an official capacity or with the acquiescence of a public official is interested in targeting the [Petitioners] for torture." *See* Appendix. However, the 2007 Harvard Study provided that "new" evidence showing that Petitioners' torture and persecution at the hands of the MS-13 was actually with the government's acquiescence. In the First Circuit, this would have been enough.

Not so in the Fifth Circuit. Despite the new evidence brought forth by Petitioners on precisely the evidentiary element lacking below, the Fifth Circuit summarily affirmed a clearly erroneous denial of Petitioners' motion to reopen by the BIA.

B. The Fifth Circuit's decision sets a dangerous precedent, and creates uncertainty for those seeking asylum under the CAT

This split in authority should not remain between the First and Fifth circuits. Instead, this Court should affirm that evidence, such as Petitioners' newly acquired evidence, demonstrating government acquiescence of gang persecution is enough to make a *prima facie* showing under the CAT.

This Court should reverse the Fifth Circuit and remand for consideration of Petitioners' new evidence in their motion to reopen, as they would have received in the First Circuit.

CONCLUSION

For the reasons set forth above, this issue is exceptionally important. The Fifth Circuit's decision splits with authority from at least one other sister court.

THEREFORE, Petitioners MARIA DEISY PALMA-PALMA, *et al.*, request of this Court that it GRANT their Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 09-60891

MARIA DEIS Y PALMA-PALMA CARLOS OVIDIO NAVARRETE JOSE RENE NAVARRETE DEISY JOHANA PALMA
Petitioners

v.

ERIC H. HOLDER, JR., U.S. ATTORNEY GENERAL,
Respondent

Petition for Review of an Order of the
Board of Immigration Appeals

Before JOLLY, WIENER and ELROD, Circuit Judges.

PER CURIAM:

IT IS ORDERED that petitioner's motion for stay of deportation pending review is DENIED.

IT IS FUTHER ORDERED that respondent's motion for summary affirmance is GRANTED.

DATED: Jan. 25, 2010.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 09-60891

MARIA DEIS Y PALMA-PALMA CARLOS OVIDIO NAVARRETE JOSE RENE NAVARRETE DEISY JOHANA PALMA
Petitioners

v.

ERIC H. HOLDER, JR., U.S. ATTORNEY GENERAL,
Respondent

On Petition for Rehearing

Before JOLLY, WIENER and ELROD, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT

/s/ United States Circuit Judge

DATED: Apr. 1, 2010.

Appendix B

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041
Decision of the Board of Immigration Appeals

Files: A200 107 469 - Houston, TX
A094 907 271
A094907272
A094907273

Date: Nov. 20, 2009

In re: MARIA DEIS Y PALMA-PALMA CARLOS OVIDIO NAVARRETE_JOSE RENE NAVARRETE DEISY JOHANA PALMA

IN REMOVAL PROCEEDINGS MOTION

ON BEHALF OF RESPONDENTS: Xenos M. Yuen, Esquire

On March 27, 2009, the Board affirmed a decision of an Immigration Judge, rinding the respondents ineligible for asylum, withholding of removal, and protection under the Convention Against Torture. The respondents, who are from El Salvador, filed a motion on June 25, 2009, which, if construed as amotion to reopen, was timely filed. *See* section 240(c)(7) of the Immigration and Nationality Act,8 U.S.C.§1229a(c)(7); 8 C.F.R. §1003.2(c)(2). The Department of Homeland Security (the "DHS") has not responded to the pending motion, which will be denied.

The motion states that the respondents filed a petition for review with the Fifth Circuit Court of Appeals, and the government moved to dismiss the appeal as untimely (Respondents' Mot., at 3).[1] The respondents seek to have the Board reissue its March 27,2009, decision, so that they may file another petition for review before the Fifth Circuit. *Id.* at 9. The respondents provide no reason why the Board should take this action.[2] Therefore, the request to reissue the Board's prior decision will be denied.

The Board, in its March 27,2009, decision, citing *Matter of S-E-G-, et al,* 24 I&N Dec. 579 (BIA 2008) and *Matter of E-A-G-,* 24 I&NDec. 591 (BIA 2008), agreed with the Immigration Judge that the respondents failed to establish that the mistreatment that they received by gangs in El Salvador was on account of an enumerated ground. The Board also affirmed the Immigration Judge's conclusion that the respondents failed to establish that they are entitled to a grant of protection under the Convention Against Torture.

Although the pending motion, filed on June 25,2009, is characterized as a "motion to reopen", the motion in large part expresses disagreement with the decisions of the Immigration Judge, and Board, and therefore seeks to have the Board reconsider its earlier decision. Yet to the extent that the respondents seek

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[1] On June 19, 2009, the Fifth Circuit granted the government's motion to dismiss the petition for review for lack of jurisdiction.

[2] To the extent that a claim of ineffective assistance of counsel is implied by the reissuance request, the respondents have not met the requirements for moving such a claim, as set forth in *Matter of Assaad,* 23 I&N Dec. 553 (BIA 2003), and *Matter of Lozada,* 19 I&N Dec. 637 (BIA1988).

reconsideration of the Board's March 27, 2009, decision, the motion is untimely. A motion to reconsider in any case previously the subj ect of a final decision by the Board must be filed not later than 30 days after the date of that decision. Section 240(c)(6) of the Act; 8 C.F.R. § 1003.2(b).

To the extent that the respondents seek reopening of their claims, the motion will also be denied. A motion to reopen will not be granted unless "the evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing." 8 C.F.R.§ 1003.2(c)(l). The respondents fail to show that the evidence they seek to present, consisting of 2 articles, one from 2005, and one from February 2007, as well as an undated affidavit from a coordinator from a youth gangs project, was unavailable at the previous hearing. *Matter of Singh*, 24 I&N Dec. 331,334 (BIA2007); *Waggoner v. Gonzales*, 488 F.3d 632,639 (5thCir.2007); *Manzano-Garcia v. Gonzales*, 413 F.3d 462,469 (5th Cir. 2005).

The pending motion will, therefore, be denied.

ORDER: The pending motion is denied.

/s/ FOR THE BOARD

Appendix C

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
HOUSTON, TEXAS

Pile A 200 3.07 469 A 94 907 271 A 94 907 272 A 94 907 273

April 10, 2007

In the Matter of

MARIA DEISY PALMA PALMA CARLOS OVIDIO NAVARRETE JOSE RENE NAVARRETE DEISY JOHANA PALMA

Respondents

IN REMOVAL PROCEEDINGS

CHARGE:
APPLICATION:

Section 212 (a)(6)(A)(i) of the Immigration and Nationality Act
Asylum; Withholding of Removal; Voluntary Departure at conclusion of Proceedings

ON BEHALF OF RESPONDENT:
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ON BEHALF OF DHS
Marilee FONG Esquire

Assistant Chief Counsel
Department of Homeland
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Houston, Texas 77036

ORAL DECISION AND ORDERS OF THE IMMIGRATION JUDGE

Respondents are a family unit consisting of the lead respondent and her 3 children. The lead respondent is a 35 year old female, and married. Her 3 children are 2 male, 19 and 16 years of age respectively and a female, 11 years of age. All respondents are natives and citizens of El Salvador. They entered the United States in or near Brownsville, Texas on or about August 14, 2005 without first being admitted or paroled after inspection by an Immigration Officer. Based on that violation, the Government issued, in each case, a Notice to Appear dated November 6, 2006, alleging the above facts and charging the respondents as removable, pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act.

On November 27, 2006, the respondents appeared with prior Counsel, and through Counsel conceded service of the charging document, admitted and conceded to the allegations and charge contained in the Notice to Appear. Based upon the admission and concession by respondents through Counsel, the Court finds the respondents removable as charged by clear and convincing evidence. Respondents, through Counsel, designated El Salvador as the country of removal should it become necessary. As relief, respondents identified Asylum and Withholding of Removal and in the alternative for Voluntary Departure. The Court provided the respondents an opportunity to file all further applications, amendments

to previously filed applications, supporting documents and witness list.

The record consists of the respondent's Application for Asylum that was filed with the Department of Homeland Security and forwarded to the Court for consideration. The record also contains the State Department Country Report for the year of 2005 and 2006. During trial respondent, through Counsel, indicated to the Court that he thought he had submitted some statements from doctors to the Department of Homeland Security with the application, and presumed that they had been forwarded to the Court. Counsel also, however, identified that he never confirmed such filing with the Government or with the Court's Record of Proceedings to insure that such has been included in the record. Counsel also advised the Court that he has no Table of Contents, or independent listing as to what had been filed with the Department of Homeland Security. The record does not contain any statements from any medical doctor.

The Court also would note that the respondent submitted some documents, apparently some photographs and a medical bill or receipt. Those documents were filed out of time without any motion or leave to file them with the Court. The Government objected to the admission of those documents and the Court finds no reason to admit them into the record when they were filed out of time. Accordingly, those documents were stricken from the record and from consideration. Trial and respondents relief applications held and completed on April 10, 2007. The lead respondent, Ms. Palma and her son Carlos were the only witnesses to testify in this case.

In order to establish eligibility for Asylum under the Immigration and Nationality Act, the respondents

must establish that they are unable or unwilling to return to their native country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group or political opinion. The Board of Immigration Appeals, in Matter of Mooharrabi. adopted a reasonableness standard to determine if fear of persecution is well-founded. The burden is on the respondents for Asylum to establish that they are refugees as defined in the Act.

An Application for Asylum is contemporaneously viewed as an Application for Withholding of Removal. In order to establish eligibility for Withholding of Removal, a respondent bears the burden to establish that their life or freedom would be threatened in a proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. This statutory provision requires that the respondents demonstrate a clear probability of persecution on one of the 5 grounds enumerated in the Act. The respondents must demonstrate that it is more likely than not, that they would be subject to persecution if returned to their native land. This is a more stringent standard than that required to establish eligibility for Asylum.

The respondents Applications for Asylum was filed after May 11, 2005. The provisions set forth in the Real I.D. Act of 2005 are therefore applicable in these cases. Accordingly, the respondents must also establish that 1 of the 5 grounds enumerated in the Act was or will be at least 1 central reason for their claim of fear of persecution.

These applications were filed after April 1, 1997. The respondents are therefore also considered for eligibility for Withholding of Removal under the

United Nations Convention Against Torture and other Forms of cruel, Inhuman or Degrading Treatment or Punishment. Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person. The severe pain and suffering must be inflicted on the respondents for 1 of 4 purposes, specifically for obtaining information or a confession, for punishing for an act committed or suspected of having been committed. For intimidation or coercion or for any reason based on discrimination of any kind. In addition, in order to constitute torture, the act must be directed against the person in the offender's custody or physical control. Further, the pain or suffering must be inflicted by, or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. Acquiescence requires that the public official have prior awareness of the activity and thereafter breaches his or her legal responsibility to intervene to defend such activity. Torture is an extreme form of cruel and inhuman treatment and does not include pain or suffering arising from lawful sanctions. The respondents bear the burden of proving that it is more likely than not that they would be tortured if removed to the proposed country of removal.

The Court has observed the demeanor of the witnesses in these cases and find both witnesses testified truthfully in support of the Applications. There is no reason for the Court to doubt their testimony. Accordingly, their testimony will begiven full weight in support of their applications.

The respondents claim fear of returning to El Salvador was based upon 2 incidents that happened to the respondent Carlos Navarrete. The first incident happened on or about February 12, 2005 when Carlos and his brother, Jose, were returning to their home

from *a.* carnival visit. According to Ms. Palma, her sons told her that they were mistreated on their way home because gangs were trying to get information from her children. The information was regarding how much money do the respondents get from their father, who is in the United States. Unable to give the information, they were beaten and beaten badly. They were hit on their face, their stomach and their legs. These assailants identified themselves by their tattoos and their announcing that they are members of the MS-13. Carlos and Jose were instead robbed of their necklaces and bracelets. The respondents believe that they were attacked because the gang or these gang members knew that their father was in the United States.

According to Carlos, he and his brother were walking home through an area where there were a lot of trees and a river close by. Suddenly 4 or 5 persons with tattoos, one of them with the tattoo MS, came up from no where. One of them grabbed Jose and beat him up. The others also beat Carlos. The beatings were done with these persons fists. They took their necklaces and taunted them. They told them that they knew Carlos and Jose and they ran away laughing. Carlos believed that they were playing with him, but he was very scared. According to Carlos, initially they asked him for money. when lie didn't give money, or he had no money to give them they grabbed their necklaces from him and his brother, Jose.

The second incident involved the kidnaping of Carlos by some gang members in June of 2005. People identified as members of the MS-13 kidnaped Carlos when he was on his way home from school. According to Ms. Palma, she did not know about the kidnaping until she received a ransom note the next day. At first she thought Carlos went and stayed with a friend. Ms. Palma testified that the ransom note asked for $20,000 and was signed by

the MS-13 group. The ransom note also indicates that without paying a ransom, Carlos would be killed. She was afraid, but did not report the incident to the police, fearing that the police could have conspired with the gangs in the kidnaping because police are corrupted and had members of their forces acting as gang members also. She also did not pay the ransom because she did not have money to pay the demand. Pour days later, Carlos (indiscernible) bleeding from his back wound. He was bleeding a lot. According to Ms. Palma, Carlos later told her that he was able to escape from the kidnapers. However, they chased him and staUbed him in his back. When Carlos managed to make his way to the street, they stopped chasing him. He was able to hitch a ride, and the driver helped him to his home. Ms. Palma took him to see a doctor who stitched his back and prescribed some medication. Carlos recovered after approximately 15 days.

According to Me. Palma, they had no other incidents with the MS-13 but nevertheless Ms. Palma did not want to remain in El Salvador any longer.

According to Carlos, the incident of his arrest very much similar to what his mother had testified to before.

Based upon the evidence presented, the Court cannot find that the respondents fear was based upon their race, religion, nationality or political opinion. The only arguable claim that was based upon their membership of a particular social group, apparently because they were targeted by the gangs knowing that they have a relative living in the United States and therefore, they have money. The Court cannot find the requisite social visibility exists for the respondents to establish a particular social group for Asylum. Not only are the respondents unable to establish that they have any immutable characteristics or traits that they cannot change or require to change, there is

insufficient evidence to differentiate a family in El Salvador with a father or husband, or family member living and working in the United States and sending money to them. The Court will note that it is insufficient that the MS-13 knew that Che respondents father or husband is in the United States or just because Carlos or his siblings dressed a little nicer than other people, a particular social group in Asylum must involve characteristics that are highly visible and recognizable by others in a country in question. See Matter of V-T-S-, Int. Dec. 792 (BIA 1997). The Court finds that the evidence presented in this case fails to establish either an immunable characteristic or social visibility that would qualify them for Asylum. See Matter of C-A, 23 I&N Dec. 951 {BIA 2006).

Even assuming that respondents were able to establish a particular social group for Asylum, the respondents also failed to establish any nexus between the harm or the threat to harm in this particular social group, not to mention that the respondents must establish that 1 of the 5 enumerated in the Act was or will be at least 1 central reason for their claim of fear of persecution. The incident that happened in February of 2005 involved a criminal act by the gang members trying to rob money from Carlos and Jose. This was not an incident that they were targeting them, but apparently it happened because they were walking through an area where the gangsters were in wait for their victims. The mere fact that the gangsters indicate that they knew Carlos and Jose is nothing more than a statement that they knew him from the area. According to Carlos, the town was a very small town and the incident happened about 3 or 4 houses away from their destination. Accordingly, the Court cannot find that the incident that happened in February of

2005 is anything more than a robbery and a criminal act. The Court cannot find that they had suffered persecution based upon any of the 5 grounds enumerated in the act.

As to the incident that happened in June of 2005, similarly, Carlos fell into a criminal act by a criminal organization. The kidnapping was not because of respondent's race, religion, nationality, membership of a particular social group or political opinion, but because of their desire to kidnap and demand ransom money. Criminal extortion efforts do not constitute persecution on account of any of the 5 grounds enumerated in the Act where it is reasonable to conclude that those who threatened or harmed the respondents were not motivated by any of the 5 grounds enumerated in the Act. The evidence here supports the conclusion that the extortion related not to the respondents' race, religion, nationality, membership of a particular social group or political opinion, but rather to their ability to pay for this ransom money. They were in a position to supply the needed financial resources to this group that they identified as MS-13. See Matter of T-M-B-, Int. Dec. 3307 (BIA 1997), Ag indicated earlier, not only did the respondent fail to establish 1 central reason for their claim of fear relates to any of the 5 grounds. They also failed to establish any nexus of the threat of harm to any of the 5 grounds enumerated in the Act. The Court would also note that respondents' claim that the Government of El Salvador would not be able to protect them from these gang activities. As pointed out by respondents' Counsel, 25% of the prison population are criminal elements in El Salvador. That is a result of the criminal justice system in El Salvador. There is no evidence that the Government is unable or unwilling to protect it's citizens from these criminal elements. The Court also recognizes that criminal

activities is rampant in El Salvador. However, that is not a basis for a claim of protection here in the United States under our Immigration Laws. Furthermore, the respondents failed to report these incidents to the police or the authority and avail themselves to their protection. Under the facts presented in these cases, the Court cannot find that the respondents have established that the Government of El Salvador was unable for unwilling to protect them from these criminal elements and the criminal activities. Based on the foregoing, the Court finds that the respondents failed to established eligibility for Asylum as well as their eligibility for Withholding of Removal pursuant to Section 241(b)(3) of the Act, which requires a more objective and stringent burden of proof. Accordingly, those Applications must be denied.

As to the respondent's Application for Withholding of Removal under the Torture Convention, the record contains not even a scintilla of evidence that the Government of El Salvador or any person acting in an official capacity or with the acquiescence of a public official is interested in targeting the respondents for torture. The record reflects that the respondents (indiscernible) of the gang members. There is no evidence that the respondent had any problem with the Government of El Salvador and there is no evidence that any authority of El Salvador is interested in targeting them for mistreatment. Accordingly, that application must also be denied.

Pending before the Court is the respondents' request to leave the United States voluntarily in lieu of an Order of Removal. The Court finds all respondents statutorily and discretionarily eligible for this minimal form of discretionary relief. The Government has not raised an issue that would affect the Court's

determination. Based upon the forgoing, the following Orders shall therefore be entered:

ORDERS

IT IS HEREBY ORDERED that the respondents be granted Voluntarily Departure in lieu of an Order of Removal, such departure to take place without expense to the United States Government on or before June 9, 2007.

IT IS FURTHER ORDERED that each respondent shall pay a $500 Voluntary Departure Bond to the Department of Homeland Security within 5 business days of today's date.

IT is FURTHER ORDERED that all respondents shall present to the Department of Homeland Security on or before May 10, 2007 with all necessary travel documents for'Voluntary Departure.

IT IS FURTHER ORDERED that should any respondent fail to abide by any of the a foregoing Orders, then these Voluntary Departure Orders shall, without further Notice or proceedings vacate and the ultimate Order of Removal shall become effective the following date. The respondents shall be removed from the United States to El Salvador on the charge contained in the respective Notice to Appear.

IT IS FURTHER ORDERED that the respondent's Application for Asylum, pursuant to Section 208 of the Act be denied.

IT IS FURTHER ORDERED that the respondent's Application for Withholding of Removal, pursuant to Section 241(b)(3) of the Act be denied.

IT IS FURTHER ORDERED that the respondent's Application for Withholding of Removal pursuant to the Torture Convention be denied.